

Senate File 183

H-1381

1 Amend Senate File 183, as passed by the Senate, as follows:

2 1. By striking everything after the enacting clause and  
3 inserting:

4 <Section 1. NEW SECTION. 26.17 **Alternative project**  
5 **delivery contracts.**

6 1. As used in this section, unless the context otherwise  
7 requires:

8 a. "*Alternative project delivery contract*" means either a  
9 design-build or construction manager-at-risk contract.

10 b. "*Bridging criteria professional*" means a person,  
11 corporation, partnership, or other legal entity that is  
12 employed by or contracted by a government entity to assist  
13 the government entity in the development of project design  
14 criteria, requests for proposals, and any additional services  
15 requested by the government entity to represent its interests  
16 in relation to a project and who meets either of the following  
17 requirements:

18 (1) Is duly licensed to practice architecture within the  
19 state and can demonstrate specific knowledge of the project  
20 type where alternative project delivery services are being  
21 sought.

22 (2) Is duly licensed as a professional engineer within the  
23 state and can demonstrate specific knowledge of the project  
24 type where alternative project delivery services are being  
25 sought.

26 c. "*Construction manager-at-risk*" means a sole  
27 proprietorship, partnership, corporation, or other legal entity  
28 that acts as a consultant to the government entity in the  
29 development and design phases and then assumes the risk for  
30 the construction, rehabilitation, alteration, or repair of a  
31 project at the contracted fixed or guaranteed maximum price,  
32 similar to a general contractor during the construction phase.  
33 A project using a construction manager-at-risk does not include  
34 the construction, reconstruction, or improvement of a highway,  
35 bridge, or culvert.

1     *d. "Design-build"* means a project delivery method subject to  
2 a two or three-phase selection process for which the design and  
3 construction services are furnished under one contract.

4     *e. "Design-build contract"* means a contract between  
5 a government entity and a design-builder to furnish the  
6 architecture of record, engineering of record, and related  
7 services as required for a given public project, and to  
8 furnish the labor, materials, and other construction services  
9 for the same public project. A design-build contract may be  
10 conditioned upon subsequent refinements in scope and price, and  
11 may permit the government entity to make changes in the scope  
12 of the project without invalidating the design-build contract.

13    *f. "Design-build project"* means the design, construction,  
14 alteration, addition, remodeling, or improvement of any  
15 buildings, infrastructure, or facilities under contract with a  
16 government entity. *"Design-build project"* does not include a  
17 project for the construction, reconstruction, or improvement of  
18 a highway, bridge, or culvert.

19    *g. "Design-builder"* means any individual, partnership,  
20 joint venture, or corporation subject to a best-value or  
21 qualification-based selection that offers to provide or  
22 provides design services and general contracting services  
23 through a design-build contract in which services within  
24 the scope of the practice of professional architecture or  
25 engineering are performed respectively by a licensed architect  
26 or licensed engineer and in which services within the scope of  
27 general contracting are performed by a general contractor or  
28 other legal entity that furnishes architecture or engineering  
29 services and construction services either directly or through  
30 subcontracts or joint ventures.

31    *h. "Design bridging criteria package"* means the  
32 performance-oriented program, scope, design, and performance  
33 specifications for the design-build project sufficient to  
34 permit a design-builder to prepare a response to a government  
35 entity's request for proposals for a design-build project.

1     *i. "Government entity"* means the same as *"governmental*  
2 *entity"* defined in section 26.2 including, for the purpose of  
3 this section, the state board of regents.

4     *j. "Proposal"* means an offer by a design-builder in response  
5 to a request for proposals to enter into a design-build  
6 contract.

7     *k. "Request for proposals"* means the document by which  
8 a government entity solicits proposals for a design-build  
9 contract.

10    1. *"Stipend"* means a payment to a design-builder who did not  
11 score the highest number of points at the conclusion of phase  
12 three of the best-value selection process to defray the cost of  
13 participating in phase two of the selection process, and for  
14 the use of any intellectual properties obtained.

15    2. Notwithstanding any other law to the contrary, a  
16 government entity shall be authorized to enter into an  
17 alternative project delivery contract.

18    3. Construction manager-at-risk contracts.

19    *a.* A government entity shall publicly disclose its intent to  
20 use the construction manager-at-risk method and its selection  
21 criteria at least one week prior to publishing the request  
22 for proposals and request for statements of qualifications.  
23 The government entity shall publish its request for proposals  
24 and statements of qualifications. Before or concurrently  
25 with selecting a construction manager-at-risk, the government  
26 entity shall select or designate an engineer or architect  
27 who shall prepare the construction documents for the project  
28 and who shall comply with all state laws, as applicable. If  
29 the engineer or architect is not a full-time employee of the  
30 government entity, the government entity shall select the  
31 engineer or architect on a basis of demonstrated competence and  
32 qualifications. The government entity's engineer or architect  
33 for a project may not serve, alone or in combination with  
34 another, as the construction manager-at-risk. This paragraph  
35 does not prohibit a government entity's engineer or architect

1 from providing customary construction-phase services under  
2 the engineer's or architect's original professional service  
3 agreement in accordance with applicable licensing laws.

4     *b.* The government entity may provide or contract for,  
5 independently of the construction manager-at-risk, inspection  
6 services, testing of construction materials, engineering, and  
7 verification of testing services necessary for acceptance of  
8 the project by the government entity.

9     *c.* The government entity shall select the construction  
10 manager-at-risk in a two-phase process.

11     (1) Phase one. The government entity shall prepare a  
12 request for statements of qualifications for the first phase.  
13 The request shall include general information on the project  
14 site, project scope, schedule, selection criteria, the time  
15 and place for receipt of statements of qualifications, and  
16 other information that may assist the government entity in its  
17 selection of a construction manager-at-risk. The selection  
18 criteria may include the construction manager-at-risk's  
19 experience, past performance, safety record, proposed personnel  
20 and methodology, and other appropriate factors that demonstrate  
21 the capability of the construction manager-at-risk. The  
22 government entity shall not request fees or prices in phase  
23 one.

24     (2) Phase two. In phase two, the government entity  
25 shall issue a request for proposals. The government entity  
26 may request that no more than five nor fewer than two  
27 construction managers-at-risk, selected solely on the basis  
28 of qualifications, provide additional information, including  
29 the construction manager-at-risk's project proposal, proposed  
30 fee, its price for fulfilling the general conditions, and its  
31 distribution plan for sharing any cost savings after completion  
32 of said project. Qualifications shall account for a minimum  
33 of forty percent of the evaluation. Cost shall account for a  
34 maximum of sixty percent of the evaluation.

35     *d.* For each phase, the government entity shall receive,

1 publicly open, and read aloud the names of the construction  
2 managers submitting proposals or statements of qualifications,  
3 respectively. Within forty-five days after the date of opening  
4 the proposals or statements of qualification submissions, the  
5 government entity or its representative shall evaluate and rank  
6 each proposal or statement of qualifications submission in  
7 relation to the criteria set forth in the applicable request.

8     *e.* The government entity or its representative shall  
9 select the construction manager-at-risk that submits the  
10 proposal that offers the best value for the government entity  
11 based on the published selection criteria and on its ranking  
12 evaluation. The government entity or its representative  
13 shall first attempt to negotiate a contract with the selected  
14 construction manager-at-risk. If the government entity or its  
15 representative is unable to negotiate a satisfactory contract  
16 with the selected construction manager-at-risk, the government  
17 entity or its representative shall, formally and in writing,  
18 end negotiations with that construction manager-at-risk and  
19 proceed to negotiate with the next construction manager-at-risk  
20 in the order of the selection ranking until a contract  
21 is reached or negotiations with all ranked construction  
22 managers-at-risk end.

23     *f.* The selected construction manager-at-risk shall publicly  
24 advertise and receive bids or proposals from trade contractors  
25 or subcontractors for the performance of all major elements of  
26 the work other than the minor work that may be included in the  
27 general conditions. A construction manager-at-risk submits  
28 its sealed bid or sealed proposal in the same manner as all  
29 other trade contractors or subcontractors. All sealed bids  
30 or proposals shall be submitted at the time and location as  
31 specified in the advertisement for bids or proposals and shall  
32 be publicly opened and the identity of each bidder and their  
33 bid amount shall be read aloud.

34     *g.* The construction manager-at-risk and the government  
35 entity or its representative shall review all trade contractor,

1 subcontractor, or construction manager-at-risk bids or  
2 proposals in a manner that does not disclose the contents of  
3 the bid or proposal during the selection process to a person  
4 not employed by the construction manager-at-risk, engineer,  
5 architect, or government entity involved with the project. If  
6 the construction manager-at-risk submitted bids or proposals,  
7 the government entity shall determine if the construction  
8 manager-at-risk's bid or proposal offers the best value for the  
9 government entity. After all proposals have been evaluated and  
10 clarified, the award of all contracts shall be made public.

11 *h.* If the construction manager-at-risk reviews, evaluates,  
12 and recommends to the government entity a bid or proposal from  
13 a trade contractor or subcontractor but the government entity  
14 requires another bid or proposal to be accepted, the government  
15 entity shall compensate the construction manager-at-risk by  
16 a change in price, time, or guaranteed maximum cost for any  
17 additional cost and risk that the construction manager-at-risk  
18 may incur because of the government entity's requirement that  
19 another bid or proposal be accepted.

20 *i.* If a selected trade contractor materially defaults in the  
21 performance of its work or fails to execute a contract with a  
22 construction manager-at-risk after being selected in accordance  
23 with this subsection, the construction manager-at-risk may  
24 itself, without advertising, fulfill the contract requirements  
25 or select a replacement trade contractor to fulfill the  
26 contract requirements.

27 4. In soliciting proposals for a design-build contract,  
28 a government entity shall determine the scope and level of  
29 detail required to permit design-builders to submit proposals  
30 in accordance with the request for proposals given the nature  
31 of the project.

32 5. *a.* A bridging criteria professional may be retained by  
33 the government entity as the government entity's representative  
34 to advise the government entity on design-build matters. The  
35 use of the bridging criteria professional shall be strictly

1 to guide and administer the government's needs through the  
2 process. The bridging criteria professional shall have  
3 demonstrated sufficient previous experience in rules and  
4 procedures specific to the design-build process. The bridging  
5 criteria professional shall, along with the government  
6 entity, be authorized to make recommendations or influence  
7 the acceptance of any material, process, or procedure used  
8 during the design and construction processes in accordance  
9 with the criteria established for the project for the purpose  
10 of evaluating compliance of the work. The bridging criteria  
11 professional may be employed or contracted by the government  
12 entity to act on behalf of the government entity for the sole  
13 purpose of administrative procedures and may not be connected  
14 in any means to the design-build team. The duration of  
15 bridging criteria professional services, prior to the issuance  
16 of a design-build contract, may begin when establishing  
17 the government entity's program requirements through design  
18 development if the complexity of the project with the  
19 governmental entity merits this level of bridging information.

20     *b.* The design bridging criteria package developed by the  
21 bridging criteria professional, which may include preliminary  
22 designs for the project, may extend to the design development  
23 level of detail, including design expectations, capacity,  
24 durability, standards, ingress and egress requirements,  
25 international building code considerations, performance  
26 requirements, the government entity's operational expectations,  
27 requirements for interior and exterior spaces, material and  
28 building system quality standards, and design and construction  
29 schedule timelines. Longevity of materials and system  
30 performance requirements shall be identified in the design  
31 bridging criteria package to identify materials and systems  
32 that have the potential to exceed the length of time the  
33 project is funded. The design bridging criteria package may  
34 include site development requirements, description of the  
35 site, surveys, soil and environmental information concerning

1 the site, provisions for utilities, storm water retention  
2 and disposal, parking requirements, requirements related  
3 to applicable local laws, local permitting requirements,  
4 preliminary designs for the project or portions thereof, and  
5 other criteria for the intended use of the project.

6 6. A government entity shall publicly disclose its intent to  
7 solicit proposals for a design-build contract and its project  
8 design bridging criteria package in the same manner that it  
9 would post notice for the competitive bidding process in  
10 section 26.3.

11 7. In soliciting proposals for a design-build contract, a  
12 government entity shall establish in the request for proposals  
13 a time, place, and other specific instructions for the receipt  
14 of proposals. Proposals not submitted in strict accordance  
15 with the instructions may be subject to rejection. Minor  
16 irregularities may be waived by the government entity.

17 8. A request for proposals shall be prepared for each  
18 design-build contract and shall contain, at minimum, the  
19 following elements:

20 a. The procedures to be followed for submitting proposals,  
21 the criteria for evaluating proposals and their relative  
22 weight, and the procedure for making awards.

23 b. The proposed terms and conditions for the design-build  
24 contract, if available.

25 c. The design bridging criteria package.

26 d. A description of the drawings, specifications, or other  
27 information to be submitted with the proposal, with guidance  
28 as to the form and level of completeness of the drawings,  
29 specifications, or other information that will be acceptable.

30 e. A schedule for planned commencement and completion of the  
31 design-build contract, if available.

32 f. Budget limits for the design-build contract, if any.

33 g. Requirements including any available ratings for  
34 performance bonds, payment bonds, and insurance, if any.

35 h. If using a three-phase, best-value selection process, the



1 amount of the stipend that will be available.

2     *i.* Any other information that the government entity in  
3 its discretion chooses to request including but not limited  
4 to surveys, soil reports, drawings of existing structures,  
5 environmental studies, photographs, references to public  
6 records, or affirmative action and minority business enterprise  
7 requirements consistent with state and federal law.

8     9. A government entity seeking to enter a design-build  
9 contract shall solicit design-build proposals either by  
10 using a three-phase, best-value process or a two-phase,  
11 qualifications-based process.

12     *a.* When solicitations require a three-phase, best-value  
13 selection process, the process shall be conducted as follows:

14         (1) Phase one. Request for statements of qualifications of  
15 design-builders.

16         (a) The government entity shall review submitted statements  
17 of the qualifications and assign points to each in accordance  
18 with this section and as set out in the instructions of the  
19 request for qualifications.

20         (b) All design-builders shall submit a statement of  
21 qualifications that shall include but not be limited to:

22             (i) Demonstrated ability to perform projects comparable in  
23 design, scope, and complexity.

24             (ii) References of owners for whom design-build projects,  
25 construction projects, or design projects have been performed.

26             (iii) Qualifications of personnel who will manage the  
27 design and construction aspects of the project.

28             (iv) The names and qualifications of the primary design  
29 consultants and the primary trade contractors with whom the  
30 design-builder proposes to subcontract or joint venture. The  
31 design-builder may not replace an identified contractor,  
32 subcontractor, design consultant, or subconsultant without the  
33 written approval of the government entity.

34         (c) The government entity shall evaluate the qualifications  
35 of all the design-builders who submitted statements of

1 qualifications in accordance with the instructions of the  
2 request for qualifications. Qualified design-builders  
3 selected by the government entity may proceed to phase two  
4 of the selection process. The evaluation shall narrow the  
5 number of qualified design-builders submitting statements of  
6 qualifications to not fewer than two nor more than five. Under  
7 no circumstances shall price or fees be a part of the request  
8 for statements of qualifications criteria. Design-builders may  
9 be interviewed in either phase one or phase two of the process.  
10 Points assigned in phase one of the evaluation process shall  
11 not carry forward to phase two or phase three of the process.  
12 All qualified design-builders shall be ranked on points given  
13 in phases two and three only.

14 (d) Once no fewer than two and no more than five qualified  
15 design-builders have been selected, the government entity shall  
16 issue its request for proposals and provide the design-builders  
17 a specified amount of time in which to concurrently assemble  
18 phase two and phase three proposals.

19 (2) Phase two. Solicitation of technical proposals,  
20 including conceptual design for the project.

21 (a) A design-builder shall submit its design for the project  
22 to the level of detail required for the proposal along with  
23 such other information the government entity requests, which  
24 may include a schedule, qualifications, and experience.

25 (b) The ability of the design-builder to meet the schedule  
26 for completing a project as specified by the government entity  
27 may be considered as an element of evaluation in phase two.

28 (c) Under no circumstances shall the design proposal  
29 contain any reference to the cost of the proposal.

30 (d) The submitted designs shall be evaluated and assigned  
31 points in accordance with the requirements of the request for  
32 proposals. Phase two shall account for not less than forty  
33 percent and no more than sixty percent of the total point score  
34 as specified in the request for proposals.

35 (3) Phase three. Proposal of construction costs.

1 (a) The government entity shall invite the selected  
2 design-builders to participate in phase three. The  
3 design-builders shall provide a fixed cost of design and  
4 construction. The proposal shall be accompanied by bid  
5 security and any other items, such as statements of minority  
6 participation, as required by the request for proposals.

7 (b) Cost proposals shall be submitted in accordance with  
8 the instructions in the request for proposals. The government  
9 entity shall reject any proposal that is not submitted within  
10 the required time frame. Phase three shall account for not  
11 less than forty percent and no more than sixty percent of the  
12 total point score as specified in the request for proposals.

13 (c) Proposals for phase two and phase three shall be  
14 submitted concurrently at the time and place specified in the  
15 request for proposals, but in separate envelopes or other means  
16 of submission. The phase three cost proposals shall be opened  
17 and read aloud only after phase two design proposals have been  
18 evaluated and assigned points, ranked in order, and posted.  
19 Cost proposals shall be opened and read aloud at the time and  
20 place specified in the request for proposals. At the same time  
21 and place, the evaluation team shall make public its scoring  
22 of phase two. Cost proposals shall be evaluated in accordance  
23 with the requirements of the request for proposals.

24 (d) If the government entity determines that it is not in  
25 the best interest of the government entity to proceed with the  
26 project pursuant to the proposal offered by the design-builder  
27 with the highest total number of points, the government entity  
28 shall reject all proposals. In this event, all design-builders  
29 with lower point totals in phases two and three shall receive  
30 a stipend and the responsive design-builder with the highest  
31 point total shall receive an amount equal to two times the  
32 stipend. If the government entity decides to award the  
33 project, the responsive design-builder with the highest point  
34 total shall be awarded the contract.

35 (e) As an inducement to qualified design-builders, the

1 government entity shall pay a stipend, the amount of which  
2 shall be established in the request for proposals, to each  
3 design-builder who submitted a proposal but was not accepted.  
4 Such stipend shall be no less than one-half of one percent  
5 of the total project budget. Upon payment of the stipend to  
6 such a design-builder, the government entity shall acquire  
7 a nonexclusive right to use the design submitted by the  
8 design-builder, and the design-builder shall have no further  
9 liability for the use of the design by the government entity in  
10 any manner. If the design-builder desires to retain all rights  
11 and interests in the design proposed, the design-builder shall  
12 forfeit the stipend.

13     **b.** When solicitations require a two-phase,  
14 qualifications-based selection process, the process shall be  
15 conducted as follows:

16         (1) Phase one. Request for statements of qualifications of  
17 design-builders.

18         (a) The government entity must prepare a request for  
19 statements of qualifications. The request shall include  
20 general information on the project site, project scope,  
21 schedule, selection criteria, the time and place for receipt  
22 of statements of qualifications, and other information  
23 that may assist the government entity in its selection of a  
24 design-builder.

25         (b) The government entity shall state the selection  
26 criteria in the request for statements of qualifications. The  
27 selection criteria may include the design-builder's experience,  
28 past performance, safety record, proposed personnel and  
29 methodology, and other appropriate factors that demonstrate the  
30 capability of the design-builder.

31         (c) Selection criteria will be ranked and assigned points  
32 for each category. Point assignments shall be included as a  
33 part of the request for statements of qualifications.

34         (d) The government entity shall not request fees or prices  
35 in phase one. Any submissions with disclosed fees or prices

1 will be disqualified and removed from consideration.

2 (2) Phase two. Negotiations.

3 (a) Negotiations shall be conducted, beginning with the  
4 design-builder ranked first. If a contract satisfactory  
5 and advantageous to the government entity can be negotiated  
6 at a price considered fair and reasonable and pursuant to  
7 contractual terms and conditions acceptable to the government  
8 entity, the award shall be made to that design-builder.

9 (b) In the event that a contract cannot be negotiated  
10 with the design-builder ranked first, negotiations with that  
11 design-builder shall be formally terminated. The government  
12 entity shall conduct negotiations with the next-highest-ranked  
13 design-builder and continue this process until a contract can  
14 be negotiated that meets the terms of subparagraph division (a)  
15 of this subparagraph.

16 10. A governmental entity or the state department of  
17 transportation shall not be authorized to enter into an  
18 alternative project delivery contract for public improvements  
19 relating to highway, bridge, or culvert construction.

20 Sec. 2. Section 262.34, subsection 1, Code 2021, is amended  
21 to read as follows:

22 1. a. When the estimated cost of construction, repairs,  
23 or improvement of buildings or grounds under charge of the  
24 state board of regents, including construction, renovation, or  
25 repairs by a private party of a property to be lease-purchased  
26 by the board, exceeds one hundred thousand dollars, the board  
27 shall advertise for bids for the contemplated improvement or  
28 construction and shall let the work to the lowest responsible  
29 bidder. However, if in the judgment of the board bids received  
30 are not acceptable, the board may reject all bids and proceed  
31 with the construction, repair, or improvement by a method as  
32 the board may determine. All plans and specifications for  
33 repairs or construction, together with bids on the plans or  
34 specifications, shall be filed by the board and be open for  
35 public inspection. All bids submitted under [this section](#) shall

1 be accompanied by a deposit of money, a certified check, or a  
2 credit union certified share draft in an amount as the board  
3 may prescribe.

4 b. The state board of regents may proceed with a  
5 construction, repair, or improvement by using an alternative  
6 project delivery contract in accordance with the provisions of  
7 section 26.17.>

8 2. Title page, by striking lines 1 through 5 and inserting  
9 <An Act relating to public construction bidding.>

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HUNTER of Polk